

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

ANTHONY CARTER,)	Civil Action No. 2:18-cv-0589
Plaintiff,)	United States District Judge
v.)	Marilyn J. Horan
BOROUGH OF PITCAIRN, et al.,)	
Defendants.)	

MEMORANDUM OPINION and ORDER

This case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. §§ 636(b)(1)(A) and (B), and Local Rule of Civil Procedure 72.

On January 7, 2020, the Magistrate Judge issued a Report (ECF No. 85) recommending that Plaintiff's case be dismissed, under *Poulis v. State Farm Fire & Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984), based on his failure to comply with a series of Orders regarding his continuing obligation to keep the Court apprised of his current address. The Court also notes that Plaintiff has failed to respond to Defendants' motion for summary judgment. ECF No. 75. Service of the Report and Recommendation was attempted at Plaintiff's listed address record, but was returned from Allegheny County Jail, with the notation: "RTS. Gone." ECF No. 86. As noted in the Report, on December 5, 2019, Court staff confirmed that Plaintiff had been released from custody on November 4, 2019. Since that time, Plaintiff has had no communication with the Court or updated his address as required. The Court will adopt the Report and Recommendation as the opinion of the Court, as supplemented herein.

In applying the six-factor test under *Poulis*, the Magistrate Judge analyzed the sixth factor as follows:

“The standard for determining whether a plaintiff’s claims are meritorious ‘is moderate.’” *Adams*, [v. Trs. of the N.J. Brewery Emps.’ Pension Tr. Fund, 29 F.3d 863, 876 (3d Cir. 1994)]. The standard for a Rule 12(b)(6) motion to dismiss for failure to state a claim, and not a summary judgment standard, is applicable in a *Poulis* analysis. *Id.* at 869-70. Plaintiff’s claims survived Defendants’ motion to dismiss. Therefore, this factor weighs slightly in favor of Plaintiff.

ECF No. 85, at 7. To clarify, in response to Plaintiff’s Amended Complaint the Monroeville Police Defendants and the Borough of Monroeville Police Officers filed a Motion to Dismiss, which was granted, and said Defendants were dismissed from this case. *See* ECF Nos. 31, 47, & 49. However, the Pitcairn Defendants filed a Motion to Dismiss in response to the initial Complaint. ECF No. 15. That Motion became moot upon the filing of Plaintiff’s Amended Complaint. *See* ECF Nos. 21 & 23. Thereafter, the Pitcairn Defendants filed an Answer to the Amended Complaint, indicating that Plaintiff’s allegations in the Amended Complaint had sufficiently addressed the arguments raised in the Pitcairn Defendants’ Motion to Dismiss the Initial Complaint. ECF No. 26. It is this sequence of filings that the Magistrate Judge is referring to in finding that Plaintiff’s claims survived Defendants’ Motion to Dismiss.

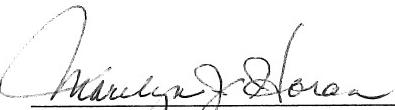
With that clarification, after a review of the pleadings and documents in this case, together with the Report and Recommendation, the Court accepts the Report and Recommendation, as supplemented herein, and enters the following Order.

ORDER

This case is **DISMISSED WITH PREJUDICE** for Plaintiff’s failure to comply with Court Orders, and/or for his failure to prosecute. The Magistrate Judge’s analysis under *Poulis*, as stated in the Report and Recommendation (ECF No. 85), and as supplemented herein, is hereby adopted as the Opinion of the District Court.

IT IS SO ORDERED.

Dated: February 4th, 2020


Marilyn J. Horan
Marilyn J. Horan
United States District Court Judge

cc: ANTHONY CARTER
167846
Allegheny County Jail
950 2nd Avenue
Pittsburgh, PA 15219
(via U.S. First Class Mail)

All Counsel of Record
(via ECF electronic notification)